Supreme Court, U.S.
FILED

03 88 JUL 11 2003

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No.

IN THE

SUPREME COURT OF THE UNITED STATES

Cheryl Bookrum,

Petitioner

v.

David C. Bookrum, Melyne F. Bookrum, Office of Servicemember's Group Life Insurance, a division of the Prudential Insurance Company of America, and Does 1 through 10, inclusive,

Respondents

On Petition for Writ of Certiorari
To the US Court of Appeals for the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Were *Wissner v Wissner*, 338 US 655 and *Ridgway v Ridgway*, 454 US 46, correctly decided?

PARTIES

All parties are as listed in the caption. Petitioner is not a corporation.

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None of the underlying decisions have been reported.

JURISDICTIONAL STATEMENT

The judgement of the Ninth Circuit was entered on April 17, 2003. This court may review it on certiorari pursuant to 28 USC 1254.

STATUTE INVOLVED

The statute involved in this case is 38 USCS §1970 (2002), the relevant portions of which are paragraphs (a) and (g), which read:

§ 1970. Beneficiaries; payment of insurance

(a) Any amount of insurance under this subchapter [38 USCS § § 1965 et seq.] in force on any member or former member on the date of the insured's death shall be paid, upon the establishment of a valid claim therefor, to the person or persons surviving at the date of the insured's death, in the following order of precedence:

First, to the beneficiary or beneficiaries as the member or former member may have designated by a writing received prior to death (1) in the uniformed services if insured under Servicemembers' Group Life Insurance, or (2) in the administrative office established under section 1966(b) of this title if separated or released from service, or if assigned to the Retired Reserve, and insured under Servicemembers' Group Life Insurance, or if insured under Veterans' Group Life Insurance;

Second, if there be no such beneficiary, to the widow or

widower of such member or former member;

Third, if none of the above, to the child or children of such member or former member and descendants of deceased children by representation;

Fourth, if none of the above, to the parents of such member or former member or the survivor of them;

Fifth, if none of the above, to the duly appointed executor or administrator of the estate of such member or former member;

Sixth, if none of the above, to other next of kin of such member or former member entitled under the laws of domicile of such member or former member at the time of the insured's death.

•••

(g) Any payments due or to become due under Servicemembers' Group Life Insurance or Veterans' Group Life Insurance made to, or on account of, an insured or a beneficiary shall be exempt from taxation, shall be exempt from the claims of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary. The preceding sentence shall not apply to (1) collection of amounts not deducted from the member's pay, or collected from him by the Secretary concerned under section 1969(a) of this title, (2) levy under subchapter D of chapter 64 of the Internal Revenue Code of 1986 (26 U.S.C. 6331 et seq.) (relating to the seizure of property for collection of taxes), and (3) the taxation of any property purchased in part or wholly cut of such payments.

STATEMENT OF THE CASE

This is a suit to recover the proceeds of a life insurance policy issued pursuant to the Servicemembers Group Life Insurance program. Petitioner is the widow of the insured decedent, David J. Bookrum. The only significant asset the decedent left behind is the SGLI policy, which the decedent left to his parents, rather than to his wife and dependent minor child. The parents and the administrator of the SGLI program are the respondents.

In California, a father's obligation to support his child survives death. *Taylor v. George* , 34 Cal.2d 552 (1949). If there were assets in the estate, it could be charged for the support of the child and the surviving spouse, California Probate Code 6540.

But insurance policies such as SGLI are outside the estate. For that reason, California Family Code 1100 and 1101 protect spouses who do not have primary control of a community asset by imposing upon spouses a fiduciary duty to each other with respect to community property. A breach of this duty entitles the surviving spouse to protect and reclaim her undivided one half interest in the community asset, and further provides not only for attorneys fees but for recovery of 100% of the asset in the appropriate case, Family Code 1101(g).

However, SGLI is a creature of federal law, and has been held not subject to California's community property laws as embodied in the aforementioned Family Code. Since this leaves petitioner and her minor dependent child without remedy, this challenge to *Wissner v Wissner*, 338 US 655 and *Ridgway v Ridgway*, 454 US 46 ensued.

After service of the summons and complaint, defendants brought a motion to dismiss, which was granted by the District Court.

This case raises an issue of federal law, so that

jurisdiction in the District Court was appropriate under 28 U.S.C. §§ 1331. Jurisdiction was granted to the Ninth Circuit by 28 USC §§ 1291. All of the individual parties are residents of the Central District of California and the dispute arose there.

The appeal to the Ninth Circuit was filed was filed on Nov. 5, 2002 from the District Court's order granting defendant's motion to dismiss entered on October 28, 2002.

ARGUMENT

To the question, then: Were *Wissner v Wissner*, 338 US 655 and *Ridgway v Ridgway*, 454 US 46, correctly decided?

Petitioner contends that the answer to the question presented is no, and that therefore what she seeks is not so much a *change* in the law as a *restoration* of it.

> "Although adherence to precedent is not rigidly required in constitutional cases, any departure from the doctrine of stare decisis demands special justification." *Arizona v. Rumsey*, 467 U.S. 203, 212, 81 L. Ed. 2d 164, 104 S. Ct. 2305 (1984). In deciding whether this case presents such justification, we recall Justice Frankfurter's admonition that "stare decisis is a principle of policy and not a mechanical formula of adherence to the latest decision, however recent and questionable, when such adherence involves collision with a prior doctrine more embracing in its scope, intrinsically sounder, and verified by experience." *Helvering v. Hallock*, 309 U.S. 106, 119, 84 L. Ed. 604, 60 S. Ct. 444 (1940). Remaining true to an "intrinsically sounder" doctrine established in prior cases better serves the values of stare decisis than would following a more recently decided case inconsistent with the decisions that came before it; the latter course would simply compound the recent error and would likely make the unjustified break from previously established doctrine complete. In such a situation, "special justification" exists to depart from the recently decided case.

Adarand Constructors v. Pena, 515 U.S. 200 at 231 (1995)

Using the above formulation, it is *Wissner* and *Ridgeway* that are the anomalies, which stand out like sore thumbs from the rulings that came before and after them.

Only Justices Rehnquist, O'Connor and Stevens remain from the Court that decided *Ridgway* in 1981. Significantly, both the Chief Justice and Justice Stevens dissented from that decision, while Justice O'Connor did not participate.

The Court has a long history of an honored dissent carrying the day at a later time. Petitioner asserts that the dissents in *Wissner* and *Ridgway* make both better sense and better policy, and this is no Quixotic venture on petitioner's part, for the undermining of those decisions by Justices of this Court has already begun.

> "As the Court acknowledges, *ante*, at 631-632, until *Ridgway*, we had carefully refused to hold that anti-attachment provisions similar to § 3101(a) shield the beneficiary from the support claims of his spouse and children." O'Connor, concurring in *Rose v Rose*, 481 U.S. 619 at 639; 107 S. Ct. 2029; 95 L. Ed. 2d 599 (1987).

The *Rose* concurrence places Justice O'Connor squarely with the *Ridgway* dissenters, and if there were any doubt, she adds just a few lines later:

> "In short, the support obligation has always been granted a special place in our law. While the broad language of § 3101(a) seems clearly meant to bar the ordinary creditor's attachment, I cannot find, in light of this Nation's common law tradition, that the language of § 3101(a) expresses anything like

> the unequivocal congressional intent necessary to bar family members from enforcing the veteran's support obligation. The contrary holding in *Ridgway* is hopelessly anomalous, and should be relegated to the status of "a derelict on the waters of the law." *Lambert v. California*, 355 U.S. 225, 232 (1957) (Frankfurter, J., dissenting)." Id.

At issue in *Rose* was whether a state court could compel a veteran to pay child support out of service connected disability benefits which had an anti-attachment provision (38 USC 3101). The majority concluded that it could, and Justice O'Connor's concurrence (notably joined by Justice Stevens) argued that since the statutory anti-attachment language at issue in 38 USC 3101 was essentially the same as that at issue in *Ridgway* (and thus, in the instant case) the two cases could not be harmonized and *Ridgway* should be dispensed with.

As Justice O'Connor also noted, even *Wissner,* upon which *Ridgway* relied "had carefully refused to hold that anti-attachment provisions similar to § 3101 shield the beneficiary from the support claims of [the veteran's] spouse and children.". Id.

Let us turn, then, to the analysis in *Wissner*. The majority begins by acknowledging both the longstanding nature of community property and that prior courts had not hesitated to hold such anti-attachment language did not exempt funds from the support claims of the veteran's wife and children, 338 US at 659-660. What the *Wissner* majority does, however, is to make a distinction between the support obligation and community property, so that community property claims can be pre-empted, but support obligations cannot. Id.

Is such a distinction tenable? Manifestly it is not. It

certainly did not impress the *Wissner* dissent:

> "The Court has sought to distinguish, unsuccessfully I think, the many cases holding that payments received as pension, disability insurance, or veterans' compensation are not exempted from claims for alimony or family support by exemption statutes in the pattern of § 454a. Exhaustive discussions may be found in *In re Bagnall's Guardianship, 238 Iowa 905, 29 N. W. 2d 597; Schlaefer v. Schlaefer, 71 App. D. C. 350, 112 F.2d 177.* See also *Gaskins v. Security-First Nat. Bank of Los Angeles, 30 Cal. App. 2d 409, 86 P. 2d 681; Hollis v. Bryan, 166 Miss. 874, 143 So. 687.* Cf. Note, *11 A. L. R. 123* and succeeding annotations." Minton, dissenting, 338 US at 663, fn2. See also, *White v US*, 270 US 175 (1926).

In other words, there is a prior and substantial body of law which holds that anti-attachment laws do not exempt the claims of the veteran's family for support. There is now also subsequent law (*Rose*) to that effect. It is only *Wissner* and *Ridgway* that stand out as anomalies. The *Ridgway* majority saw "no significant difference between the community property interest at issue in *Wissner* and the property settlement giving rise to the instant action". 454 US at 61, fn11. In that, at least, they were correct, which is why <u>both</u> *Ridgway* and *Wissner* must be discarded.

Even the *Wissner* majority recognized the semantic quagmire it was creating by trying to distinguish between community property and the support obligation. "There are, of course, support aspects to the community property principle, and in some cases they may be of considerable importance." 338 US at 660, fn4.

Petitioner argues that in the instant case, where there are no other assets left by the decedent, they are not merely of considerable, but of paramount, importance. Petitioner further notes that in *Wissner* there was no issue of children or their support.

Setting aside the *Ridgway* anomaly, *Wissner* and *Rose*, taken together, create a class whereby those with court ordered support have more protection than those in intact families, or newly split families that had not yet secured such a court order by the time of the veteran's death. In other words, a divorce decree provides better protection for a veteran's dependent family than a marriage. This cannot possibly be the result intended by Congress. Where a statute is capable of more than one reasonable interpretation, but one of those interpretations brings about an unpalatable result, that is a clue that the interpretation with the unpalatable result is incorrect.

Community property ***is*** support. It is the recognition that both spouses contribute significantly to the family enterprise, (which includes the support of its children) no matter what the relative earnings of the marriage partners. It is intended to protect the property interests of both spouses, and what is that property for except the support, maintenance, and living of the family? California calls the alienation of this community asset nothing less than a breach of fiduciary duty. That is a breach of trust.

And how is it that Congress can by legislative fiat declare certain property outside the reach of the 5th amendment? The *Wissner* majority engaged in a tautology when it dismissed out of hand the wife's constitutional claims. *Wissner's* interpretation of the servicemember's life insurance statutes also result in them depriving intact and newly separated families of 5th amendment equal protection.

Returning, then, to *Adarand Constructors*, supra, we see that there is in fact "a prior doctrine more embracing in its

scope, intrinsically sounder, and verified by experience". It is that line of cases cited by the dissent in *Wissner*, including *Bagnall*, *Schlaefer*, and others, which recognize and protect the support obligation, do not make a tortured and nonsensical distinction between support and community property, and do not equate familial obligations with those to mere commercial creditors. It is a line that was restored by *Rose* and interrupted only by *Wissner* and *Ridgway*. The courts should not "compound the recent error and ... make the unjustified break from previously established doctrine complete." This is just the situation in which "'special justification' exists to depart from the recently decided case[s]." *Wissner* and *Ridgeway* should be overruled. And this is hardly an academic point, since, as this petition is being written, our armed forces remain under hostile fire in Iraq, not to mention service in Afghanistan, Liberia, and a host of other dangerous places.

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APPENDIX

Filed April 17, 2003
Cathy A. Catterson
Clerk, US Court of Appeals

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CHERYL BOOKRUM,	No. 02-56916
Plaintiff-Appellant,	D. C. No. CV-02-06376 FMC
vs.	MEMORANDUM*
DAVID C. BOOKRUM; et. al.,	
Defendants-Appellees.	

Appeal from the United States District Court
for the Central District of California
Florence Marie Cooper, District Judge, Presiding

Submitted April 7, 2003**

Before: BROWNING, RYMER, and KLEINFELD, Circuit

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*This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

**This panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

Judges

Cheryl Bookrum appeals the District Court's judgment dismissing her action seeking to recover, based on California's community property law, proceeds of a life insurance policy issued to her husband, under which she is not a beneficiary. We have jurisdiction pursuant to 28 U. S. C. section 1291. We review de novo, *Lipton vs. Pathogenesis Corp.*, 284 F. 3rd 1027, 1035 (9th Cir. 2002), and we affirm.

The policy at issue here is governed by federal law under the servicemember's group life insurance act of 1965. See 38 USC sections 1965-1980. The Supreme Court held in both *Wissner vs. Wissner*, 338 US 665 (1950), and *Ridgway vs. Ridgway*, 454 US 46 (1981), that the servicemember's designation of beneficiaries determines to whom the proceeds of the insurance should be paid, notwithstanding any contrary provisions of state law. The District Court properly relied on these cases despite Bookrum's contention that they were wrongly decided.

Affirmed.

Entered October 28th 2002
Central District of California
Filed October 28th 2002
Central District of California

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Cheryl Bookrum,
Plaintiff,

v.

David C. Bookrum, et al.,
Defendants.

CV 02-06376 FMC (FMOx)
ORDER GRANTING DEFENDANT'S MOTION TO DISMISS

This matter is before the court on Defendant Prudential Insurance Company of America's Motion to Dismiss (docket No. #7). The court deems this matter appropriate for decision without oral argument. See Fed. R. Civ. P. 78; Local Rule 7-15. Accordingly, the hearing set for October 28th, 2002, is removed from the court's calendar. For the reasons set forth below, the court hereby grants the motion to dismiss.

Plaintiff seeks to recover proceeds of a life insurance policy issued to her deceased husband. A life insurance policy designated the decedent's parents as beneficiaries. Plaintiff seeks to recover the proceeds notwithstanding this designation.

The policy at issue is governed by federal law regarding armed servicemember's life insurance policies. *See* 38 USC sections 1965-1980. Plaintiff candidly concedes that in order for her claim to succeed, this Court would be required to ignore the dictates of the Supreme Court decisions of *Wissner vs. Wissner*, 338 US 655, 70 S. Ct. 398 (1950), and *Ridgway vs. Ridgway*, 454 US 46, 102 S. Ct. 49 (1981). In both Wissner and Ridgway, the Supreme Court held the servicemember's designation of beneficiaries determined to whom the proceeds of the insurance would be paid,

notwithstanding contrary provisions of state law.

Accordingly, the court hereby grants defendant's motion to dismiss. The court hereby dismisses with prejudice all claims as to all defendants.

Dated: October 25th, 2002

Signed: Florence-Marie Cooper
United States District Court

(Please note that although Judge Cooper's signature is dated the 25th and the order was filed and entered on the 28th, there is no separate judgement and so none is attached.)

Supreme Court, U.S.
FILED
AUG 15 2003
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No. 03-88

In The Supreme Court of the United States

CHERYL BOOKRUM,

Petitioner,

v.

DAVID C. BOOKRUM, MELYNE F. BOOKRUM, OFFICE OF SERVICEMEMBERS' GROUP LIFE INSURANCE, A DIVISION OF THE PRUDENTIAL INSURANCE COMPANY OF AMERICA, AND DOES 1 THROUGH 10, INCLUSIVE,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

The Petitioner brought an action in the United States District Court seeking one-half of the proceeds of a policy of insurance issued in accordance with 28 U.S.C. § 1965, et seq. (the Servicemembers' Group Life Insurance Act) for which she was not named a beneficiary. Petitioner's claim was based on her alleged community property interests, as governed by California law. On motion by this Respondent, the United States District Court dismissed Petitioner's action. The Ninth Circuit Court of Appeals upheld that ruling. There are three questions for review presented in Petitioner's petition:

1. Is there any basis for departing from *stare decisis* and overturning *Wissner v. Wissner*, 338 U.S. 655 (1950) which has for more than fifty years stood for the proposition that the Supremacy Clause requires that the important federal interests identified by Congress in enacting the "anti-attachment" provisions of the Servicemembers' Group Life Insurance legislation must take precedence over community property interests based on state law?

2. Is there "substantial justification" for departing from the precedent of *Wissner* and *Ridgway v. Ridgway*, 454 U.S. 46 (1981) and relying on a body of law that predates and contradicts the decisions in these cases such that overturning them would in fact constitute a restoration of prior law or would such action result in a dramatic and significant change in the law?

3. Can the Petitioner state a claim for which relief can be granted?

CORPORATE DISCLOSURE STATEMENT

Respondent The Prudential Insurance Company of America is a wholly owned subsidiary of Prudential Financial, Inc., a publicly traded corporation. Both Respondent The Prudential Insurance Company of America and its parent, Prudential Financial, Inc., are incorporated under the laws of the State of New Jersey and have their principal places of business in Newark, New Jersey.

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RESPONDENT'S BRIEF IN OPPOSITION

Pursuant to United States Supreme Court Rule 15, Respondent The Prudential Insurance Company of America ("Prudential"), hereby submits this brief in opposition to the petition for writ of certiorari.

STATEMENT OF THE CASE

Petitioner Cheryl Bookrum (hereinafter "Petitioner" or "Bookrum") seeks one-half of the proceeds of a life insurance policy issued to her late husband, David J. Bookrum, by the Office of Servicemembers' Group Life Insurance, a federal program administered by Prudential (Servicemembers' Group Life Insurance Act, 38 U.S.C. § 1965-1980 hereinafter "the Act" or "SGLI"). Petitioner is not a named beneficiary under the policy and instead makes her claim based on an unspecified "property interest" in the proceeds. Although not alleged in the complaint, the petition makes clear that Petitioner's alleged interest is based upon California community property laws.

Prudential moved to dismiss under Federal Rule of Civil Procedure 12(b)(6). Respondents David C. Bookrum and Melyne F. Bookrum, the named beneficiaries on the SGLI policy, joined in that motion. The motion to dismiss was based upon the provisions of the Act and regulations promulgated to implement the Act which established that the servicemember has the absolute right to designate beneficiaries. *See* 38 U.S.C. § 1970(a), and 38 C.F.R § 9.4(b)(2003). Upon designation of beneficiaries, the Act

requires payment to the named beneficiaries, notwithstanding conflicting claims to proceeds asserted by others. *See* 38 U.S.C. § 1970(a).[1]

Prudential relied upon *Wissner v. Wissner*, 338 U.S. 655 (1950), and *Ridgway v. Ridgway*, 454 U.S. 46 (1981). These cases held that under the Supremacy Clause (U.S. Const. art. VI, § 2), the Act's requirement that the proceeds of the insurance be paid to designated beneficiaries must be upheld notwithstanding conflicting claims based on state law. Prudential specifically relied upon this Court's findings in *Wissner* and *Ridgway* that Congress placed great importance upon honoring the servicemembers' designation of beneficiaries in adopting the so-called "anti-attachment" or "exemption" provisions of the Act. In

---

[1] Section 1970(a) and (g) state in pertinent part:

(a) Any amount of insurance under this subchapter in force on any member or former member on the date of the insured's death shall be paid, upon the establishment of a valid claim therefore, to the person or persons surviving at the date of the insured's death, in the following order of precedence:

First, to the beneficiary or beneficiaries as the member or former member may have designated by a writing received prior to death

[by the appropriate office]

* * *

(g) Any payments due or to become due under Sevicemembers' Group Life Insurance or Veterans Group Life Insurance made to, or on account of, an insured or a beneficiary shall be exempt from taxation, shall be exempt from the claims of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary.

accordance with these decisions, this federal "benefit" program, narrowly limited to the proceeds of life insurance payable upon the death of a member of the Armed Forces, preempts state law claims under the Supremacy Clause.

Prudential also argued that there was no basis for departure from this precedent established by *Wissner* and *Ridgway*. Specifically, Prudential successfully established that there is no "prior and substantial body of law" that would establish the "special justification" required to stray from *stare decisis* and overturn *Wissner* or *Ridgway*.

In her complaint, Bookrum alleges that she is the widow of David J. Bookrum who died on or about March 9, 2002. Mr. Bookrum was a member of the Armed Services of the United States and, in that capacity, obtained life insurance through the Office of Servicemembers' Group Life Insurance. Bookrum alleged that the premiums for the policy were paid for with community property funds belonging to both the decedent and petitioner. Bookrum further alleges that on or about June 14, 1998, the decedent changed the designation of beneficiaries on the policy from a designation that beneficiaries were to be paid "by law" to one naming his parents, Respondents David C. Bookrum and Melyne F. Bookrum, as beneficiaries.

No claim to the life insurance proceeds was alleged on behalf of Petitioner's minor son, nor is the minor son a party to this action. Moreover, there was no allegation in the complaint that "the only significant asset the decedent left behind was the SGLI policy," nor any other allegations regarding the dependent minor child's claim to or need for the policy proceeds.

Petitioner appealed from the district court's ruling granting Prudential's motion to dismiss. A three-judge

panel of the Ninth Circuit Court of Appeals reviewed the matter *de novo*. The Court of Appeals upheld the district court's dismissal of this action and specifically its reliance upon *Wissner* and *Ridgway*.

ARGUMENT

I. INTRODUCTION.

Petitioner has not stated a claim for which relief can be granted. Under the Supremacy Clause, Congress' intent – that the proceeds of a SGLI policy be paid to designated beneficiaries only – must be upheld. In reaching the same conclusion, this Court found in *Wissner* and *Ridgway* that Congress specifically determined that the significant federal interests in preserving for the servicemember alone the right to devise the proceeds of this special form of life insurance is substantial and that, accordingly, conflicting state interest must give way. *Wissner* and *Ridgway* are clear, and there is no factual, legal, or rational basis for departing from the rule they long ago established. Since *Wissner* and *Ridgway* were decided, nothing has changed regarding the important federal interest recognized by Congress in ensuring the peace of mind of the servicemember: that his or her designated beneficiary will, in fact, receive the proceeds of a life insurance policy obtained under the Act. There is no claim or allegation that this rule established by Congress and upheld by this Court has not worked well, or that a departure from this rule, under which this type of insurance program has operated for more than fifty years, would not dramatically undermine and defeat these important federal interests.

Contrary to Petitioner's contention, there is no prior "intrinsically sounder" body of law to the contrary.

Moreover, altering the rule established by *Wissner* and *Ridgway* would pose a great risk of uncertainty, which would undermine the significant federal interests Congress intended to advance. First, changing the rule to allow states to dictate who should receive the policy proceeds would undermine servicemember morale, where the federally created benefit program was specifically designed to promote servicemember morale by letting each servicemember choose for him or herself how the proceeds should be distributed. SGLI is unlike other federal servicemember benefits programs, such as veterans benefits, which are intended to ensure the servicemembers' family and creditors as well. SGLI was specifically designed to give the servicemember the peace of mind of knowing that the person he wanted to provide for would be taken care of in the event of his death.

Second, if a servicemembers' designation of a beneficiary is not protected, the program would become less predictable and more complicated for the servicemember to comprehend. Every state could, theoretically, establish its own laws regarding distribution of the benefit proceeds. Moreover, within states there may be conflicts as to which court – civil, family, probate or other – should determine the distribution of the benefit. To make matters even more complicated, multiple states may claim rights to administer the benefits. Thus, numerous conflicting "rules" could be applied to determine proper payment of SGLI policy proceeds, and conflicts among states would create a legal maze to traverse, which would further erode the benefit with legal fees.

For example, members of the armed forces, who often relocate from state to state, would find their benefits governed by any one of these different jurisdictions, and the rules could change depending on the *temporary* posting for the servicemember. For some, like Petitioner, community property rules would apply to the distribution of the benefits. For others, community property rules would not apply. In some instances, such as where servicemembers are married outside the territory of the United States, simply determining which laws govern administration of the benefits may be the primary obstacle to overcome.

Finally, reliance on state law to determine the propriety and effect of a beneficiary designation could add significant delays and costs to the administration of this program under the Act because it would drastically increase the volume of potential complications and conflicts over payment and distribution of proceeds under SGLI policies.

Again though, most significantly, such a rule would eliminate the peace of mind borne of certainty that the current rule affords servicemembers who, as noted by Petitioner, at this very moment may find themselves in virtually every corner of the world.

In short, Petitioner cannot establish her claim without undermining the important federal interest of ensuring members of the Armed Forces that their selection of beneficiary for life insurance will be honored. *Wissner* and *Ridgway* govern, and there is no basis for revisiting those holdings.

II. THE SERVICEMEMBERS' GROUP LIFE INSURANCE ACT REFLECTS CLEAR AND SUBSTANTIAL FEDERAL INTERESTS.

The provisions of the Act convey upon servicemembers an intangible but significant benefit. The servicemember who designates a beneficiary gets nothing for him or herself, except the knowledge and security that proceeds will be paid to those selected beneficiaries and to no others. Although the value of such a benefit may be difficult to assess, the potential detriment to be suffered were the benefit withdrawn now, after more than fifty years of continued and successful protection, is not difficult to envision. Petitioner relies upon community property rights which allegedly are intended to provide for family and child support. Petitioner claims that these interests must prevail over this federal "benefit" program. Petitioner's claims completely ignore the substantial federal interests at stake for which, even without *Wissner* and *Ridgway*, the Supremacy Clause would demand protection.

A. The Servicemembers' Group Life Insurance Act.

The Servicemembers' Group Life Insurance Act (the "Act") and in particular the provisions that Petitioner challenges here, are essentially unchanged since the time the Court decided *Ridgway*. There, the Court outlined the history of this legislation:

> In order to make life insurance coverage available to members of the uniformed services on active duty, particularly in combat zones, Congress in 1965 enacted the [SGLI]. *See* H. R. Rep. No. 1003, 89th Cong., 1st Sess., 7th (1965). The impetus for the legislation was the escalating level of

hostilities and casualties in the then ongoing Vietnam conflict; this had prompted private commercial insurers to restrict coverage for service members. *See* 111 Cong. Rec. 24339 (1965) (remarks of Rep. Teague, Chairman of the House Committee of Veteran's Affairs; *see also* S. Rep. No. 619, 89th Cong. 1st Sess., 3 (1965). The earlier program of federally sponsored life insurance for servicemembers, *see* National Service Life Insurance Act of 1940, 54 Stat. 1008, *and* National Service Life Insurance Act of 1958, as amended, 38 U.S.C. § 701 *et seq.* (NSLIA), placed in effect shortly before the involvement of this country in World War II, had been allowed to lapse after the end of the Korean hostilities when commercial insurance generally became available to servicemembers. Accordingly, NSLIA coverage could not be obtained by any servicemembers on active duty in 1965. *See* 111 Cong. Rec. 24339 (1965) (remarks of Rep. Teague).

* * *

The SGLIA initially provided insurance only for members serving in specified services. 79 Stat. 880. The maximum coverage allowed was then $10,000. *Id.*, at 881. Since 1965, however, statutory changes have expanded both eligibility for coverage and the amount of insurance available. The program is operated on a presumptive enrollment basis; coverage is provided automatically and premiums are withheld from the service member's pay, unless the insurance is expressly declined or is terminated by written election. 38 U.S.C. §§ 767(a) and 769.

Ridgway, 454 U.S. at 51-52 (footnotes omitted).

Like the version of the statute in effect at the time of *Ridgway*, the current Act still provides for the United States to pay, depending on conditions and circumstances, at least a portion of the cost of this insurance program. *See* 38 U.S.C. § 1969. Moreover, the "order of precedence" for policy beneficiaries, with which the court in *Ridgway* was concerned, continues in the current version of the statute where the policy proceeds are to be paid first "to the beneficiary or beneficiaries as the member or former member may have designated by [an appropriately filed] writing received prior to death." 38 U.S.C. § 1970(a). Moreover, the Act continues to include the same "anti-attachment" or "exemption" provision considered by the court in *Ridgway,* with only minor changes. *See* Pub. L. No. 105-368 § 302(b) *and* 38 U.S.C. § 1970(g). That provision, as it currently exists, states "any payments due or to become due under Servicemembers' Group Life Insurance . . . made to, or on account of, an insured or a beneficiary shall be exempt from taxation, shall be exempt from the claims of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary." 38 U.S.C. § 1970(g).

B. This Court Has Already Twice Affirmed The Significance Of The Federal Interests Promoted By The "Anti-Attachment" Provision Of The Act And Its Predecessor Legislation.

The designation of beneficiary and "anti-attachment" or "exemption" provisions of the Act that were before this Court in *Ridgway* were virtually identical to the provisions contained in the predecessor National Service Life

Insurance Act (NSLIA) reviewed by the Court in *Wissner*. *See* 54 Stat. 1008 (repealed 1965). There the court found that these provisions granting to the qualified service-member the absolute right to designate beneficiaries, and ensuring that proceeds are actually paid to designated beneficiaries notwithstanding conflicting state law-based claims, reflect significant federal interests. *See Wissner*, 338 U.S. at 660-661. After quoting the designation of beneficiary provision in the NSLIA, the Court in *Wissner* said the following:

> Thus Congress has spoken with force and clarity in directing that the proceeds belong to the named beneficiary and no other. Pursuant to the congressional command, the Government contracted to pay the insurance to the insured's choice. He chose his mother. It is plain to us that the judgment of the lower court, as to one-half of the proceeds, substitutes the widow for the mother, who was the beneficiary congress directed shall receive the insurance money. We do not share appellee's discovery of congressional purpose that widows in community property states participate in the payments under the policy, contrary to the expressed direction of the insured. Whether directed at the very money received from the Government of an equivalent amount, the judgment below nullifies the soldier's choice and frustrates the deliberate purpose of Congress. It cannot stand.

Wissner, 338 U.S. at 658-659.

In addressing the constitutionality of these aspects of the law before it, the majority in *Wissner* also said:

> Certainly Congress in its desire to afford as much material protection as possible to its

> fighting force could wisely provide a plan of insurance coverage. *Possession of government insurance, payable to the relative of his choice, might well directly enhance the morale of the serviceman.* The exemption provision is his guarantee of the complete and full performance of the contract to the exclusion of conflicting claims. *The end is a legitimate one within the congressional powers over national defense, and the means are adapted to the chosen end.*

Id. at 660-661 (emphasis added).

The Court in *Ridgway* found that these "clear and substantial" federal interests would suffer "major damage" if the designation of beneficiary and exemption/anti-attachment provisions of the Act were required to yield to state family, and family property laws. *See Ridgway,* 454 U.S. at 54. The Court noted that "[t]he federal interest is especially strong because a substantial share of the proceeds of a [SGLI] policy may be attributable to general tax revenues." *Id.* at 57.

Both *Wissner* and *Ridgway* recognized that the interest Congress intended to promote by the designation of beneficiary and anti-attachment provisions of the Act, *may impact morale of the military itself. See Wissner*, 338 U.S. at 660, *and Ridgway*, 454 U.S. at 56-57. Both decisions recognized the validity and seriousness of these concerns.

It is not unreasonable to assume that the morale of servicemembers may suffer were they to know that the designation of beneficiary they make on their SGLI policy may not be honored because of community property, family law, or other state law based claims. It seems highly unlikely, for example, that such knowledge would improve or enhance their morale.

C. The Supremacy Clause Requires That The "Anti-Attachment" Provision Of The Act Preempt State Community Or "Exemption" Property Laws.

Whether a particular state action is preempted by federal law is always a question of Congressional intent. See *Ingersoll-Rand Co. v. McClendon*, 498 U.S. 133 (1990). "The purpose of Congress is the ultimate touchstone." *Id.* at 138 (quoting *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202 (1985)). In determining Congress' intent, the starting point is the explicit statutory language and the structure and purpose of the statute. *See FMC Corp. v. Holliday*, 498 U.S. 52 (1990).

Domestic relations law is the domain of the states. *See In re Burrus*, 136 U.S. 586 (1890). This Court has said that "state family and family-property law must do 'major damage' to 'clear and substantial' federal interests before the Supremacy Clause will demand that state law be overridden." *McCarty v. McCarty*, 453 U.S. 210 (1981) (citations omitted). This has never meant, however, that domestic relations laws are wholly immune from federal preemption. As to a state's interests, the rule is that "the relative importance to the state of its own law is not material when there is a conflict with a valid federal law, for the Framers of our Constitution provided that the federal law must prevail." *Ridgway*, 454 U.S. at 54-55 (citations omitted).

Throughout the history of conflict between federal and state domestic relations laws, there have been different results depending on the facts, and the provisions of the particular statutes involved. In connection with the Act, and in particular the provisions involved here, however, this Court has consistently held that, when Congress gave

servicemembers the right to designate a beneficiary and protected the benefits from competing claims, that this is exactly what Congress meant. Petitioner makes no showing why this interpretation of congressional intent should now be changed.

III. THERE IS NO BASIS FOR DEPARTING FROM THE PRECEDENT OF *WISSNER* AND *RIDGWAY* WITH RESPECT TO COMPETING CLAIMS FOR SGLI POLICY PROCEEDS.

Petitioner has not offered any evidence or argument here or below that in any way casts doubt upon the propriety of this Court's findings in *Wissner* and *Ridgway* of Congressional intent and the federal interests promoted by the Act. Appellant has failed to show that there is any "special justification" required to overturn this precedent. *See Adarand Constructors v. Pena*, 515 U.S. 200 (1995) *citing Arizona v. Rumsey*, 467 U.S. 203 (1984). Petitioner's claim that there exists a prior doctrine that is "intrinsically sounder and verified by experience," is unavailing. *Id. citing Helvering v. Hallock*, 309 U.S. 106 (1940). No such "prior doctrine" exists. Nor is Petitioner correct in assuming that criticism of *Wissner* and *Ridgway* by some members of this Court in opinions addressing the nature of claims that can overcome anti-attachment provisions of *other* federal benefit programs demonstrates an intent or desire to eliminate the important, unique, and long-held benefit Congress bestowed on certain members of the military on active duty.

A. There Is No "Special Justification" For Overruling *Wissner* And *Ridgway*.

To establish a basis for departing from *stare decisis*, Petitioner cites *Adarand*. That case, however, does not support Petitioner here.

Petitioner's reliance on *Adarand* is misplaced because there is no "'intrinsically sounder' doctrine established in prior cases" on which the Court may rely to overrule *Wissner* and *Ridgway*. In *Adarand*, the Court explained the practical application of this test as follows:

> *Metro Broadcasting* undermined important principles of this Court's equal protection jurisprudence, established in a line of cases stretching back over 50 years, see *supra*, at 213-225. Those principles together stood for an "embracing" and "intrinsically sound" understanding of equal protection "verified by experience," namely, that the Constitution imposes upon federal, state, and local governmental actors the same obligation to respect the personal right to equal protection of the laws. This case therefore presents precisely the situation described by Justice Frankfurter in *Helvering:* We cannot adhere to our most recent decision without colliding with an accepted and established doctrine. We also note that *Metro Broadcasting's* application of different standards of review to federal and state racial classifications have been consistently criticized by commentators.

Id. at 231-232 (citations omitted).

Here, there is no "line of cases stretching back over 50 years" that would justify departure from the clearly established precedent *Wissner* and *Ridgway* represent. To

the contrary, these two decisions *are* the fifty years of precedent upon which more than two generations of America's servicemembers have relied, and Petitioner has offered not one good reason why this should change.

Petitioner's suggestion that the earlier cases mentioned in *Wissner* that dealt with claims for alimony or child support constitute this "intrinsically sounder" body of law is inaccurate. In *In re Guardianship of Bagnall*, 29 N.W. 2d 597 (Iowa 1947), the Supreme Court of Iowa addresses a claim for *alimony* made against the property of a mentally incompetent divorced husband who was a veteran. The property was acquired by his guardian with the use of various veteran's benefits and disability pension monies earned as a result of his military service. *Bagnall* did not involve a deceased servicemember, and the benefits involved were not the proceeds of a policy of life insurance issued during a period of his active duty in the military.

Moreover, the claim being made in *Bagnall was not for the benefits or proceeds themselves*, but for property that was acquired with those benefits. As the court in *Bagnall* explained, the question before it was "whether the property of the mentally incompetent husband, in the possession of his guardian, which has been acquired with benefit payments [consisting of veterans' disability compensation, pension, war risk insurance, and adjusted service compensation], is exempt, under either the statutes of the United States or the statutes of Iowa, from the enforced payment of the judgment of the plaintiff wife for alimony." *Bagnall,* 29 N.W. at 598. This is not the question Petitioner raises here.

Bagnall and the other decisions cited by Justice Minton in his dissent in *Wissner* (*see, e.g., Schlaefer v.*

Schlaefer, 112 F.2d 177 (D.C. Cir. 1940), *Gaskins v. Security First Nat'l Bank of L.A.*, 86 P.2d 681 (Cal.App. 1939), and *Hollis v. Bryan*, 143 So. 687 (Miss. 1932) simply do not deal with the issues involved in the present case, in *Wissner*, or in *Ridgway*. All of those cases involved a veteran, not a deceased servicemember. None of them concerned the disposition of proceeds of a SGLI life insurance policy. And although those cases stand for the general proposition that not all federal veterans benefit programs that include exemption provisions can withstand claims for alimony or child support, they do not constitute an "intrinsically sounder" body of law that would be justification for over-turning *Wissner* and *Ridgway*.

B. The Precedent Challenged Here Is Not A Recent Departure From Prior Law.

For over 50 years servicemembers have relied on the validity and enforceability of their right to designate a beneficiary of their choice under this unique life insurance program. To now undermine the choices already made by many, who due to recent hostilities may well have already given their lives in service of their country, would exact a terrible penalty. As the Court explained in *Adarand*, such a penalty should be avoided at all costs.

> It is worth pointing out the difference between the applications of *stare decisis* in this case and in *Planned Parenthood of Southeastern Pa.* v. *Casey*, 505 U.S. 833, 112 S. Ct. 2791, 120 L. Ed. 2d 674 (1992). *Casey* explained how considerations of *stare decisis* inform the decision whether to overrule a long-established precedent that has become integrated into the fabric of the law. Overruling precedent of that kind naturally

> may have consequences for "the ideal of the rule of law," *id.*, at 854. In addition, such precedent is likely to have engendered substantial reliance, as was true in *Casey* itself, *id.*, at 856 ("For two decades of economic and social developments, people have organized intimate relationships and made choices that define their views of themselves and their places in society, in reliance on the availability of abortion in the event that contraception should fail"). But in this case, as we have explained, we do not face a precedent of that kind, because *Metro Broadcasting* itself *departed* from our prior cases – and did so quite recently. By refusing to follow *Metro Broadcasting*, then, we do not depart from the fabric of the law; we restore it. We also note that reliance on a case that has recently departed from precedent is likely to be minimal, particularly where, as here, the rule set forth in that case is unlikely to affect primary conduct in any event. Cf. *Allied-Bruce Terminix Cos.* v. *Dobson*, 513 U.S. 265, 130 L. Ed. 2d 753, 115 S. Ct. 834 (1995), (declining to overrule *Southland Corp.* v. *Keating*, 465 U.S. 1, 79 L. Ed. 2d 1, 104 S. Ct. 852 (1984), where "private parties have likely written contracts relying upon *Southland* as authority" in the 10 years since *Southland* was decided).

Id. at 233-234.

The Servicemembers' Group Life Insurance Act and its predecessor statutes have been in effect for over fifty years. Prudential has been paying benefits under policies issued pursuant to this program to the beneficiaries designated by the servicemembers. All these years of reliance on the provisions of the Act have created a long-standing precedent and well-established custom and

practice in the Armed Services. Servicemembers obtain a SGLI policy, designate beneficiaries, and defend their country believing that if they die, the benefits of the policy will be paid to their chosen beneficiary. Undermining this practice is not justified factually, legally or socially, and would run contrary to the very test upon which Petition relies.

C. *Wissner* And *Ridgway* Do Not "Stand Alone" Or "Stick Out Like Sore Thumbs" But Are In Fact Consistent With A Long Line Of Decisions Resolving Conflicts Between State Law And Federal Benefit Programs.

One reason the federal life insurance program Petitioner challenges should be treated differently is because it *is* different. Life insurance, unlike other federal benefit programs, does not pay proceeds until the servicemember dies. The proceeds ("benefits") are not paid to the servicemember, but to beneficiaries. Decisions like *Wissner* and *Ridgway* clearly contemplate that the servicemember's life may well be lost while in service to his or her country. It is, after all, that very eventuality that apparently prompted the enactment of the statute in the first place. *See, e.g.*, *Ridgway*, 454 U.S. at 50 (explaining that the legislation was enacted "[i]n order to make life insurance coverage available to members of the uniformed services on active duty, particularly in combat zones.") It makes sense, therefore, to treat this "benefit" differently than one would treat veterans' pensions or disability payments.

Moreover, *Wissner* and *Ridgway* are completely consistent with other decisions involving conflicts between state community property laws and claims of exemption for federal benefit programs. In *Free v. Bland*, 369 U.S.

663 (1962), the Court addressed a conflict between rights created by state community property law and the right of survivorship in United States Savings Bonds issued in co-ownership form. In *Hisquierdo v. Hisquierdo*, 439 U.S. 572 (1979), the Court considered a conflict arising from provisions of the Railroad Retirement Act of 1974. In *McCarty v. McCarty*, 453 U.S. 210 (1981), the Court dealt with a conflict between community property rights and military retirement pay. In each of these cases, this Court addressed allegations that rights created and guaranteed by state community property laws were unconstitutionally denied by federal legislation. The question in these cases was whether rights created by federal legislation should be given precedence because of the Supremacy Clause of the United States Constitution even though this would effectively trump community property rights created by state law. In every instance, the Court found that based on congressional intent, the Supremacy Clause required preemption.

D. Justice O'Connor's Dissent In *Rose* Does Not Signal An Intent Or Desire To Change The Rule Of SGLI Preemption And Certainly Does Not Support Ignoring Supreme Court Precedent.

Petitioner's speculation that Justice O'Connor's dissenting opinion in *Rose v. Rose*, 481 U.S. 619 (1987), supports overturning *Ridgway* and *Wissner*, is unjustified. *Rose* involved an appeal from a state court contempt ruling entered against a totally disabled veteran who refused to comply with the court order that he make child support payments. The veteran in *Rose* claimed that his sole source of income was composed entirely of benefits paid by the Veteran's and Social Security Administration,

and that these benefits should be exempt from the order that he pay child support. The majority of the court in *Rose* held that the state contempt order should be upheld. Justice O'Connor concurred with this holding but filed a separate opinion because, as she explained, she would "rest this conclusion ... on a ground that the court disdains – the distinction between familial support obligations and other debts." *Rose*, 481 U.S. at 636. Apparently Justice O'Connor was concerned with the majority's discussion of *Ridgway*. With respect to *Ridgway*, the majority of the court in *Rose* said:

> Admittedly, in *Ridgway*, we rejected a proposed construction of [38 U.S.C. Section] 770(g) that would have barred its application to the children's equitable claim, 454 U.S., at 60-61, and we were unable to agree that the distinction between family support obligations and community property divisions would sustain an except to the statute's operation. *Id.* at 61-62, n. 11; *see also*, *id.* at 68-70 (Powell, J., dissenting). But the critical difference between *Ridgway* and the present case is that Congress has not made appellant the exclusive beneficiary of the disability benefits. As we have demonstrated, these benefits are intended to support not only the veteran, but the veteran's family as well. Recognizing an exception to the application of [38 U.S.C. Section] 3101(a)'s prohibition against attachment, levy, or seizure in this context further, not undermine, the federal purpose in providing these benefits. Therefore, regardless of the merit of the distinction between the moral imperative of family support obligations and the businesslike justifications for community property division, we conclude that [Section] 3101(a) does not

> extend to protect a veteran's disability benefits from seizure where the veteran invokes that provision to avoid an otherwise valid order of child support.

Id. at 633-634.

Petitioner argues that Justice O'Connor's comments justify distinct treatment of state law based claims to federal benefits which by federal statute are exempt from "attachment, levy, or seizure" due to the difference between familial support obligations and other debts. But the case it bars does not involve veteran's benefits such as those involved in *Rose*, federal railroad employee's retirement benefits involved in *Hisquierdo*, or with military retirement pay as in *McCarty*. This case is solely about life insurance for members of the Armed Services on active duty.

Although Justice O'Connor's opinion in *Rose* certainly makes clear her belief that the exemption provision of the statute providing veteran's benefits before the court in that case was not intended "to protect the veteran against claims by his family." *Rose*, 481 U.S. at 637. Her comments also support the argument that the Servicemembers' Group Life Insurance Act, the program at issue here and in *Ridgway*, should *not* be subject to such state law claims, whether based on community property, family law or anything else. As Justice O'Connor explained:

> The Court apparently views *Ridgway v. Ridgway*, 454 U.S. 46 (1981), as an insuparable obstacle to acknowledging that this distinction makes the difference here. I disagree: while *stare decisis* concerns may counsel against overruling *Ridgway's* interpretation of the Servicemen's Group Life Insurance Act, I see no reason whatsoever to *extend Ridgway's* equation of business debts with

> family support obligations absent the clearest Congressional direction to do so.

Id. at 636 (emphasis added).

Third, nothing in Justice O'Connor's opinion in *Rose* supports overruling the precedent established by *Ridgway* or *Wissner* as it pertains to the Servicemembers' Group Life Insurance Act. As to this "benefit program," there is simply no reason whatsoever to alter or upset this precedent. The significant and strong federal interest promoted by the designation of beneficiary and exemption provisions of the Act justify its unique position.

IV. SUMMARY.

SGLI provides life insurance for members of the Armed Services. The "benefit" conveyed on servicemembers by the provisions of the program under attack is the peace of mind gained from knowing that the beneficiaries they designate, and no others, will receive the proceeds of the policy, promptly and without litigation. This Court has twice held that this intangible benefit serves to promote vital federal interests: the morale and performance of the military. The 50 years of precedent reflected by the *Wissner* and *Ridgway* decisions establish that protection of these federal interests is what Congress intended, and that they must take precedence over competing state interests.

Petitioner has overlooked the most significant issue at stake. It is not the nature of her claim, or the validity, or source of that claim, whether it be in family law, child support, spousal support, or community property law, that matters. Instead, in accordance with long-standing

principles applied to the determination of conflicts between State and Federal law, it is the intent of Congress that must be considered. It is, after all, the nature and extent of the federal interests, as reflected by the acts of Congress, that will determine whether the Supremacy Clause requires that the federal laws take precedence over conflicting state laws.

Petitioner has offered nothing to suggest that the provisions of the Act in question do not promote the morale or performance of the military, or that undermining the long-held and well-established rule of exemption will not have a detrimental effect on these important federal interests. None of the authorities upon which Petitioner relies concern or address these issues. Petitioner does not even address the validity, legitimacy or strength of the federal interests promoted by the Act. Petitioner can state no claim for which relief can be granted. The District Court's dismissal of this case, and the Ninth Circuit's affirmation of the decision should be left alone.

V. CONCLUSION

It is respectfully submitted that the Petition for Writ of Certiorari should be denied.

DATED: August 15, 2003

Respectfully submitted,

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